In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1615

UTAH CAPITAL CORPORATION and
GLENN W. McMURRAY, *Petitioners,*

vs.

UNITED STATES DISTRICT COURT, *Respondent,*

SECURITIES AND EXCHANGE COMMISSION,
ARTHUR E. LLOYD, GARY B. LARSON
and BLAZON CORPORATION,
Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS
to the United States District Court for the
Northern District of California

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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ORDERS BELOW

On October 6, 1975 petitioners moved to dismiss the action brought by the Securities and Exchange Commission on the basis of improper venue and lack of personal jurisdiction due to the absence of significant contact with the forum. On November 26, 1975, the United States District Court for the Northern District

of California denied petitioners' motions. On January 23, 1976, petitioners sought a writ of mandamus from the United States Court of Appeals for the Ninth Circuit. The petition for mandamus was denied on March 24, 1976, on the basis that mandamus is not a substitute for appeal.

INTRODUCTION

Petitioners pray that a writ of certiorari issue to review the order of the United States Court of Appeals entered on March 24, 1976 denying their petition for a writ of mandamus. Petitioners pray that a writ of mandamus issue to compel the United States District Court for the Northern District of California to dismiss with prejudice an action brought by the Securities and Exchange Commission, real party in interest, against petitioners because said court clearly lacks personal jurisdiction over petitioners, who, as a practical matter, have no remedy by appeal. The SEC, having obtained an unopposed preliminary injunction against all defendants is not prejudiced by any delay. (Ex. A).

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. §§ 1254(1) and 1651(a).

QUESTION PRESENTED

Does the United States District Court for the Northern District of California have personal jurisdiction over petitioners on the sole basis that a corporation of which they were the major shareholder and director respectively, mailed into California a Regulation A offering circular to be filed in the Northern District and did not amend it as required? It is undisputed that none of the defendants in the action had any contact with the forum. The question is related to one currently pending before the court in *United States v. Natelli,* Docket Nos. 75-894 and 75-808, CCH Fed. Sec. L. Rep. ¶95,250. There, the SEC successfully argued below that proper venue under §27 of the Securities Exchange Act in a criminal case is the place where the false proxy materials were prepared, not necessarily where they were filed.

STATEMENT OF THE CASE

The district court asserts personal judisdiction on the sole and exclusive basis that Blazon Corporation (Blazon), of which the petitioner Glenn W. McMurray (McMurray) was a director and the petitioner Utah Capital Corporation (UCC) a principal shareholder, mailed from Arizona to the Branch Office of the Securities and Exchange Commission (the "SEC") in the Northern District of California, a Regulation A offering circular later alleged by the SEC to have been fraudulent. The jurisdictional facts are not in dispute. The SEC has never contended that any defendant

in this action was a resident, had offices, conducted business, offered stock, sold stock, had any contact with, or was served with process in the Northern District of California. It contends only that the filing alone authorized extraterritorial service.

On July 22, 1975, the SEC filed its Complaint For Injunction in the Northern District of California alleging securities acts violations against Blazon, an Arizona corporation, its president, Lloyd, its vice president and legal counsel, Larson, both directors as well, and against the petitioners UCC, a small business investment company owning 50% of Blazon's stock, and UCC's president, Glenn W. McMurray, who, although also a director of Blazon, owned none of its stock. Lloyd and Larson are residents of Arizona. UCC is a Utah Company and McMurray is a resident of Idaho (Complaint, paragraphs 7-11).

The SEC obtained an unopposed preliminary injunction on August 27, 1975. No defendant appeared. (Ex. A) Thereafter petitioners retained counsel who procured extensions of time to plead.

On October 6, 1975, petitioners moved under Rule 12 of the Federal Rules of Civil Procedure to dismiss the SEC action on general grounds, among them improper venue and lack of jurisdiction. The motion was denied on November 26, 1975. (Ex. B) after which petitioners answered the complaint, raising improper venue and lack of personal jurisdiction as affirmative defenses. The court struck these defenses on January 22, 1976 because they had already been decided adversely to the petitioners on November 26, 1975. On

January 23, 1976, petitioners petitioned the Ninth Circuit Court of Appeals for a writ of mandamus to compel the dismissal of the SEC action on the basis of improper venue, lack of personal jurisdiction and a violation of due process of law. The petition was denied on March 24, 1976. (Ex. C)

Venue as a statutory prerequisite to jurisdiction is improperly laid under §22 of the Securities Act of 1933 (Securities Act) and §27 of the Securities Exchange Act of 1934 (Exchange Act) because petitioners committed no act whatsoever within the Northern District of California. The District Court has exceeded its jurisdiction because petitioners had no contact at all with the Northern District or the State. The only party present in California is the SEC, and the only contact was that the Blazon registration statement crossed into California by mail to be filed in San Francisco. Petitioners claim that the District Court is now acting in excess of its jurisdiction and in an unconstitutional manner. The SEC's bringing this action in a district where no act was done is both unlawful and an abuse of process. Unless this court, in the exercise of its review, advisory and supervisory jurisdiction, reviews the order denying the petition for mandamus and mandates that the District Court dismiss the action brought by the SEC against these petitioners, they will be forced to trial on July 26, 1976, before a court without power to act and in a jurisdiction having no connection with any conduct, transaction or witness upon which this action or a defense to it rests. (Ex. D)

REASONS FOR ALLOWANCE OF THE WRIT

I. THE UNITED STATES DISTRICT COURT IS CLEARLY WITHOUT JURISDICTION

The district court has asserted "judicial jurisdiction" over petitioners admittedly having no contact with California, thereby rendering the maintenance of this action unlawful under the Securities Acts and unfair under 5th Amendment due process standards. Actual notice and an opportunity to be heard do not create personal jurisdiction not otherwise valid. This is particularly true under the Securities Acts where nationwide service of process is allowed only if venue is proper. Securities Act of 1933 §22; Securities and Exchange Act of 1934, §27.

Neither act provides for venue at the place of filing. The Securities Act provides for venue where the defendant is found, is an inhabitant or transacts business, or where the offer or sale took place.[1] Neither petitioners nor other defendants were found, were inhabitants of, or transacted business in the Northern District. No offer of sale took place in the Northern District. Therefore, venue not being proper in the Northern District under the Securities Act, the District Court does not have personal jurisdiction over petitioners, regardless of personal service and an opportunity to be heard. Mailing the registration statement clearly does not confer jurisdiction under

[1]Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

the 1933 Act. *Rosenberg v. Globe Aircraft Corp.,* 80 F.Supp. 123, 125 (E.D. Pa. 1945).

Section 27 of the Exchange Act lays venue in the District where any criminal act or transaction occurred, where the defendant is found, is an inhabitant or transacts business.[2] Again, neither petitioners nor other defendants were found, were inhabitants of, or transacted business in the Northern District. The SEC claims, however, that filing and omitting to amend the Regulation A circular in the Northern District were acts constituting violations of the Act within the Northern District supporting venue and personal jurisdiction.

But the venue of an action to enforce liability or to enjoin violation of the Exchange Act refers, according to §27, to a district where a criminal proceeding might have been brought. A criminal proceeding requires proof of scienter. *United States v. Van de Carr,* 343 F.Supp. 993 (C.D. Cal. 1972). Mailing the circular to the Northern District was required by the

[2]SECTION 27. The district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this title or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this title or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this title or rules and regulations thereunder, or to enjoin any violation of such title or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

SEC, and thus cannot, by definition, furnish the evil intent requisite to a criminal violation. Since a criminal proceeding could not have been brought in the Northern District based solely on the mailing, even less may a civil action be brought in that district based solely on the mailing.

Even if the violation in the district need not have been criminal, it must at least be volitional to support venue. Here, the filing was mandatory and ministerial. By analogy to *Rosenberg v. Globe Aircraft Corporation, supra,* if cooperating in the preparation and filing of a registration statement, without more, is not participating in a sale for venue purposes under §22 of the Securities Act, neither can mailing to the district a defective registration statement constitute a "violation" for venue purposes under §27 of the Exchange Act.

Finally, merely mailing documents into a jurisdiction cannot support venue or jurisdiction. In *Goldberg v. Touche Ross & Co.,* 390 F.Supp. 290 (S.D. N.Y. 1975) the court held that mailing into the district allegedly fraudulent financial statements designed to influence trading of Giant Stores Corporation stock, without more, did not make that district a place where an act constituting a violation of the Exchange Act had occurred.

> The only reason I can see for this action having been brought here is that counsel for plaintiff is located here. Such a reason has little weight with a busy court when it is realized that competent counsel exist in Pennsylvania and this action could just as easily have been brought in Pennsylvania under the liberal venue provisions of Section 27 of the Securities Exchange Act of 1934. Despite the broad language and liberal interpretation given to Section 27, it will not sustain plaintiff's position. His argument is that he can sue this defendant in any district in the country to which the alleged fraudulent material was sent. The mere mailing into the Southern District of New York, without more, does not make this district a place where an act constituting the violation occurred as to this plaintiff.
>
> 390 F.Supp. at p. 291.

To the same effect are: *Pratt v. First California Co., Inc.,* CCH Fed. Sec. L. Rep. ¶95,095 (10th Cir. 1975) (mailing of stock certificate into forum district not "act or transaction" under Section 27); *Lewis v. Dwyer,* CCH Fed. Sec. L. Rep. ¶94,151 (S.D.N.Y. 1973) (letter from transfer agent insufficient for jurisdiction); *Kaufman v. Mink,* CCH Fed. Sec. L. Rep. ¶92,869 (S.D.N.Y. 1970) (advanced signing of nonbinding underwriters' agreement insufficient for venue); *Olympic Capital Corp. v. Newman,* 276 F. Supp. 646 (C.D. Cal. 1967) (mailing loan application, financial statements and other reports not part of purchase or sale for venue purposes); *Polaroid Corp. v. Casselman,* 213 F.Supp. 379 (S.D.N.Y. 1962) ("mechanical fact" of purchase and sale on New York Stock Exchange insufficient to prevent transfer of venue).

The case at bar is stronger than those cited because the mailing here was not directly related to the marketing of Blazon stock.

The SEC has not leapt to the public defense, but seeks only to impale by a single prong the hapless petitioners in a forum far removed from and completely unrelated to the sale of Blazon stock. No defendant did any act in California. The circular was prepared and mailed outside California. It entered California through the United States mail and was filed by the SEC in San Francisco. Even if the effect of filing the circular occurred in California, the cause of the effect did not, and does not connect these petitioners with the forum or give it jurisdiction over them.

In *Lorenz v. Watson,* 258 F.Supp. 724 (D. Penn. 1966) at p. 729 it was held that any omission by the defendant New York Stock Exchange in supervising wrongful activities of securities salesmen took place in New York rather that at the place of the salesmen's offending acts, so that venue did not lie in Pennsylvania:

> Section 27 of the Act is a special venue provision, and venue is to be established only in compliance with its terms. In the view this Court takes, any omission on the part of the Exchange took place in New York where it conducts its affairs. There is nothing in the way of legislative history which suggests that Congress intended so broad an interpretation of this provision, nor is such an interpretation necessary to attain the basic objective of adequately protecting the investing public.
>
> The motion of the Exchange to dismiss will, therefore, be granted.
>
> 258 F.Supp. at p. 729.

In *United States v. Natelli,* S. Ct. Docket Numbers 75-894 and 75-808, it was held by the court below that the gravamen of the criminal violation of §32 of the 1934 Act was making the false statement, not filing it.

II. THE DISTRICT COURT'S ASSERTION OF PERSONAL JURISDICTION OVER PETITIONERS HAVING NO CONTACT WITH THE STATE OF CALIFORNIA VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Section 27 of the Exchange Act allows nationwide service of process if venue is proper. Even though petitioners were personally served outside the forum (which is not disputed), the due process clause of the 5th Amendment limits the reach of federal process much the same as the 14th Amendment curtails the reach of state process. *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The issue is not territorial sovereignty but fairness to the defendant, notwithstanding actual notice:

> ". . . due process requires only that in order to subject a defendant to a judgment in person, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'."
>
> *International Shoe Co. v. Washington, supra,* 326 U.S. at 316.

Without discussion, Federal Courts, including the 9th Circuit, apply *International Shoe* due process standards to federal jurisdiction questions as well.[3]

Wagman v. Astle, 380 F.Supp. 497 (S.D.N.Y. 1974) held that where the only contact between foreign individual defendants and the forum jurisdiction in a derivative suit was the *required filing with the SEC* of statements of equity ownership, maintenance of the action violated due process of law. *Wagman* relied heavily upon *Leasco Data Processing Equipment Corporation v. Maxwell,* 468 F.2d 1326 (2nd Cir. 1972), wherein Judge Friendly specifically held that due process limited the jurisdictional reach of §27 (468 F.2d at p. 1339). The court in *Leasco* cited as controlling *Hanson v. Denkla,* 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), a 14th Amendment state process case to the effect that it is "essential to each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state thus invoking the benefits and protection of its laws" 468 F.2d at p. 1340. (Chief Justice Warren in *Hanson* also said: "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." Here, the SEC's unilateral act of mandatory filing in San Francisco likewise cannot satisfy the requirement of contact with the forum jurisdiction. (357 U.S. at p. 253). *Wagman* and *Leasco* directly and

[3]*L.D. Reeder Contractors of Arizona v. Higgins Industries,* 265 F.2d 768 (9th Cir. 1959).

clearly held that due process required some act having a direct, foreseeable and purposeful effect within the forum jurisdiction. Such an act is conspicuouly absent in the case at bar.

Another Section 27 case espousing the same principle is *Getter v. R. G. Dickenson & Co.,* 366 F.Supp. 559 (S.D. Iowa 1973):

> The substantiality of the contact and the foreseeability of the impact in Iowa of acts outside of this state are most relevant to determining whether this Court should assume jurisdiction.
>
> If the financial reports traveling into Iowa were the only contact with this state by the accountants, this Court may have been compelled to reach the same conclusion as reached by Judge Friendly in *Leasco* and Judge Stuart in Continental Western Industries, Inc. v. L. Handelsman and Company, Civil No. 72-237-1, S.D.Ia., March 14, 1973; to-wit: That the accountants could not be sued in the district in which the only contact was the fact that the financials eventually came to this district. In the present case, however, the additional contact with this state from the trip to Iowa by Mr. Parris in connection with the disputed financial reports, combined with the fact of these financials entering Iowa is sufficient to allow this Court to exercise *in personam* jurisdiction over the accounting defendants through extra-territorial service of process. (emphasis in original).
>
> 366 F.Supp. at p. 568.

Here the only contact with California was the Regulation A circular traveling into the State, not to influ-

ence prospective California purchasers of Blazon Stock, but to comply with the SEC's requirement. The denial by the district court of petitioners' motions is unsupported by reason or authority, and is so total and unwarranted a departure from statutory and due process standards as to compel petitioners to seek mandamus from this court as the only recourse available to prevent manifest injustice.

MANDAMUS IS APPROPRIATE

The 9th Circuit denied the petition for mandamus upon the strength of *Ex Parte Chicago RI & Pac. Ry.,* 255 U.S. 273, 41 S.Ct. 288, 63 L.Ed. 631 (1921) wherein there was evidence that the party over which jurisdiction was sought had intervened to become a party to the suit and entered a general appearance so as to become subject to the jurisdiction of the court. There, the jurisdiction of the court was doubtful and depended on a finding of fact upon evidence not in the record. Here, the jurisdiction of the court is clearly lacking and the issue is a legal one of first impression. If petitioners can be compelled to appear in any jurisdiction where a government agency requires papers to be filed, the invitation to abuse is obvious. This Court has the duty not only to confine the District Court to its lawful jurisdiction but to apply well-established principles of supervisory mandamus in furtherance of proper judicial administration. *LaBuy v. Homes Leather Co.,* 352 U.S. 249, 259-260, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957). The court below

has not ruled on mere discovery matters but upon the very liberty of petitioners. *Schlagenhauf v. Holder,* 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964). The court has maintained a preliminary injunction against them since August 1975 and seeks now to force them to trial in a distant unrelated forum. Yet the ease with which the SEC may merely refile its suit in the appropriate forum should petitioners prevail on appeal means, as a practical matter, that unless threshold review is permitted, the jurisdictional question will evade review altogether. *Matter of Skinner & Eddy Corp.,* 265 U.S. 86, 95-96, 44 S.Ct. 446, 68 L.Ed. 912 (1923); *Perlman v. United States,* 247 U.S. 7, 38 S.Ct. 417, 62 L.Ed. 950 (1918), *Nixon v. Sirica,* 487 F.2d 700 (D.C. Cir. 1973) at p. 707.

Notwithstanding the availability of appeal, mandamus is nevertheless appropriate in the case at bar because petitioners claim and it is apparent that entertaining the SEC action is *beyond* the jurisdiction of the District Court, not merely an erroneous action within its jurisdiction. In such cases, this court has discretionary jurisdiction to issue a writ of mandamus consistent with "accepted principles and usages of law." *United States v. Weinstein,* 452 F.2d 704 (2nd Cir. 1971) at p. 713, cert. denied sub nom. *Grunberger v. United States,* 406 U.S. 917, 92 S.Ct. 1766, 32 L.Ed.2d 116 (1972). Petitioners respectfully urge that the District Court's preliminary injunction against petitioners and its assertion of jurisdiction over them is *beyond* the power conferred by the Securities Act and the Exchange Act, and is independently

a violation of due process of law, which can only be corrected by issuing a writ of mandamus to prevent further manifest injustice.

Dated, San Francisco, California,
April 30, 1976.

THOMAS M. BURTON,
HANCOCK, ROTHERT & BUNSHOFT,
Attorneys for Petitioners
Utah Capital Corporation and Glenn W. McMurray.

(Exhibits Follow)

Exhibits

Exhibit A

United States District Court
Northern District of California
Civil Action

No. C-75-1523-SAW

Securities and Exchange Commission,
Plaintiff,

vs.

Blazon Corporation, Arthur E. Lloyd, Gary B. Larson, Utah Capital Corporation, Glenn W. McMurray,
Defendants.

[Filed Aug. 27, 1975]

JUDGMENT OF PRELIMINARY INJUNCTION AGAINST BLAZON CORPORATION, ARTHUR E. LLOYD, GARY B. LARSON, UTAH CAPITAL CORPORATION, GLENN W. McMURRAY

Plaintiff Securities and Exchange Commission ("Commission") filed its Complaint in this action on July 22, 1975. On the same day, the Commission moved this Court for a Preliminary Injunction against each of the Defendants. The Commission's Motion for Preliminary Injunction was duly noticed and came on regularly for hearing August 21, 1975. David P. Goss appeared as counsel for Plaintiff. No appearances were made on behalf of any of the defendants and none of

the Defendants filed papers in opposition to the Commission's Motion for Preliminary Injunction.

The Court having considered the Summons and Complaint, the Commission's Motion for Preliminary Injunction, the Commission's Affidavit, the exhibits thereto and Brief in Support thereof, finds the facts and makes the conclusions of law as specifically set forth in the Findings of Fact and Conclusions of Law attached hereto, and it appearing to this Court that unless the Commission's requested relief is granted immediate and significant injury to the public will result and there being no just reason for delay, and it further appearing that the Court has jurisdiction of the parties and the subject matter hereof, and the Court being fully advised in the premises:

I

It Is Hereby Ordered, Adjudged And Decreed that Defendants Blazon, Lloyd, Larson, UCC and McMurray, their officers, directors, partners, agents, servants, employees, attorneys, successors, assigns and all persons in concert or participation with them be and they hereby are preliminarily enjoined from, directly or indirectly, in connection with the purchase or sale of Blazon securities or any other security, by the use of any means or instruments of transportation or communication in interstate commerce or by the mails:

(1) employing any device, scheme or artifice to defraud; or

(2) obtaining money or property by means of, or otherwise making, any untrue statements of

material facts or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made not misleading; or

(3) engaging in any act, practice, transaction, or course of business which operates or would operate as a fraud or deceit upon any person.

II

Defendants Blazon, Lloyd, Larson, UCC and McMurray, their officers, directors, partners, agents, servants, employees, attorneys, successors, assigns and all persons in active concert or participation with them be and they hereby are preliminarily enjoined from, directly or indirectly:

(1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell Blazon securities or any other security through the use or medium of any prospectus or otherwise unless a registration statement is in effect with the Commission as to such security;

(2) carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;

(3) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, or offer to buy such securities through the use or medium of any prospectus or otherwise any security, unless and until a registration statement has been filed with the Commission as to such security, or while a registration statement filed with the Commission as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. 77h].

Provided, however, that nothing in the foregoing portion of this Injunction shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. 77e].

/s/ Stanley A. Weigel
United States District Judge

Dated: August 27, 1975
San Francisco, California

Exhibit B

United States District Court
Northern District of California

Civil Action No. C-75-1523-SAW

Securities and Exchange Commission,
Plaintiff,
vs.
Blazon Corporation, Arthur E. Lloyd, Gary B. Larson, Utah Capital Corporation, Glenn W. McMurray,
Defendants.

[Filed November 26, 1975]

ORDER DENYING MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT OF UTAH CAPITAL CORPORATION AND GLENN W. McMURRAY

Plaintiff Securities and Exchange Commission ("Commission") filed its complaint in this action on July 22, 1975. Whereupon the defendants Utah Capital Corporation ("UCC") and Glenn W. McMurray ("McMurray") after twice stipulating to an extension of time to answer moved this Court on October 7, 1975, with motions to dismiss the action for failure to state a claim upon which relief can be granted, for lack of personal jurisdiction, improper

venue and insufficiency of service of process, for failure to plead fraud with particularity under Rule 9(b) and for summary judgment on the grounds that no genuine issue of fact as to this Court's jurisdiction exists.

After a duly noticed hearing thereon, and the Court having considered the record and file herein, the arguments of counsel and points and authorities submitted relating to the said motions, and after due consideration thereof;

the Court finds: (1) that the plaintiff's Complaint states a claim against these defendants upon which relief can be granted; (2) that venue is properly lodged in this district and this Court has personal jurisdiction over the defendants UCC and McMurray; (3) that the defendants UCC and McMurray were properly served with the Summons and Complaint; (4) that plaintiff's complaint is well pleaded under Rules 8 and 9 of the Fed. R. Civ. P.; and (5) that motions made pursuant to Rule 12(b) and not for summary judgment are the appropriate manner to raise questions as to this Court's jurisdiction. Now, therefore, it is

Ordered that the motion of Defendants UCC and McMurray to dismiss the action because the complaint fails to state a claim against these defendants upon which relief can be granted be, and it hereby is, denied; and it is further

Ordered that the motion of defendants to dismiss the action or in lieu thereof to quash the return of

service of summons for insufficiency of service of process be and it hereby is, denied; and it is further

Ordered that the motion of defendants UCC and McMurray to dismiss the action for lack of personal jurisdiction and improper venue be, and it hereby is, denied; and it is further

Ordered that the motion of defendants UCC and McMurray to dismiss the action for the failure of the complaint to plead fraud with particularity under Rule 9(b) be, and it hereby is, denied; and it is further

Ordered that the motion of the defendants UCC and McMurray for summary judgment be, and it hereby, is denied without prejudice.

Ordered that the defendants UCC and McMurray shall file an answer to the complaint by

/s/ Stanley A. Weigel
United States District Judge

Dated: Nov./26/75.

Exhibit C

United States Court of Appeals
for the Ninth Circuit

No. 76-1136

Utah Capital Corporation, A Utah Corporation, and Glenn W. McMurray, an individual,
Petitioners,
vs.
Securities & Exchange Commission,
Real Party Interest.

[Filed March 24, 1976]

ORDER
PETITION FOR WRIT OF MANDAMUS

Before: CHAMBERS and WALLACE, Circuit Judges

Upon due consideration, the petition for writ of mandate is denied. Mandamus is not a proper substitute for appeal. *Ex parte Chicago R & I Pac. & Ry.*, 255 U.S. 273 (1920).

Exhibit D

In the United States District Court
for the Northern District of California

No. C-75-1523-SAW

Securities and Exchange Commission,
Plaintiff,
vs.
Blazon Corporation, et al.,
Defendant.

ORDER FOR TIMES OF COMPLIANCE WITH CERTAIN LOCAL RULES OF COURT

Counsel for all parties having this day been present for hearing in open Court; their views having been considered; and good cause appearing,

It Is Hereby Ordered (subject to modification only by further written Order of Court):

1. All proceedings in this matter are temporarily stayed for a period of thirty (30) days until May 3, 1976.

2. All discovery shall have been completed and all depositions taken on or before June 25, 1976.

3. Certificate of Readiness (LR 103(c) and (d)) shall be filed by plaintiff or jointly by all parties on or before June 25, 1976.

4. Informal Pre-Trial Conference (LR 104(a)) shall be held on June 28, 1976, commencing at 10:00

o'clock A.M. at the offices of counsel for Plaintiff. Within one week thereafter, all counsel shall sign and file a written statement briefly summarizing the results of such conference.

5. A final Pre-Trial Order for the Court's signature (LR 104(c), 105, 106(e), 126-130), shall be filed on or before July 13, 1976, and, just below the place for signature of the Judge, shall carry a statement subscribed to by counsel for all parties declaring that they request the Court to make that order.

6. The court Pre-Trial Conference (LR 106) shall be had before the Court on the 16th day of July, 1976, at 9:45 A.M.

7. Deeming it necessary for the orderly prosecution of the case, the Court hereby orders the parties to comply, on or before July 16, 1976, with all the provisions of LR 106(e) (1), (3), (4), (5) and (6) and, if a jury trial has been demanded, the parties shall on or before said date lodge with the Court all desired jury instructions (typewritten out in full with authority cited at end of each instruction) and requests for voir dire examination of prospective jurors after having made bona fide efforts to agree upon the same (LR 106(e) (2)). This provision of this order shall be deemed to have been included in the Pre-Trial Order provided for in Paragraph 5 of this order.

8. This case is set for trial on July 26, 1976, at 10:00 o'clock A.M., or as soon thereafter as the Court may designate, all counsel having been advised that

they must be prepared accordingly to go to trial on a trailing basis.

9. All discovery motions and objections are hereby referred for decision to Magistrate Owen E. Woodruff. The Magistrate shall provide for all appropriate hearings on such motions and objections. This reference is made in the interest of expediting compliance with this order.

10. To the extent, if any, that this order may be in conflict with the Local Rules of Practice For The United States District Court Northern District of California, the provisions of this order shall control. The Schedule established by Paragraphs 1 through 8 of this order may not be changed except by written Order of this Court upon its own motion or upon motion of one or more parties made pursuant to LR 114.

Dated: 4/2/76.

Stanley A. Weigel
Judge.

The parties request the Court to make the foregoing Order:
/s/ David P. Cross
Attorney for Plaintiff(s)

/s/ James P. Barber
Attorney for Defendant(s)
Utah Capital Corporation and
Glenn W. McMurray